

**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 05-CV-329-GKF-SAJ
)	
TYSON FOODS, INC., et al,)	
)	
Defendants.)	

DEFENDANTS' STATUS REPORT FOR HEARING OF APRIL 27, 2007

INTRODUCTION

A hearing is set on Cargill, Inc. and Cargill Turkey Production, LLC's Motion to Compel for April 27, 2007. The Court provided the parties an opportunity to ask that additional issues involving the production of Electronically Stored Information be added to the agenda of that hearing if they can be heard on short notice. Order of April 6, 2007, at pp. 5-6 (Dkt. 1125). Defendants ask the Court to add two issues to the agenda for the April 27 hearing, as set out below.

- 1. The parties do not agree on the meaning of the Court's term "potentially discoverable" ESI.**

The Court has ordered the parties to identify "potentially discoverable" ESI. Order Implementing Rules for Discovery of Electronically Stored Information ("ESI"), December 5, 2006 at paragraph B(5) (Dkt. 996); Stipulated Order Implementing Parties' Agreement Concerning Discovery of Electronically Stored Information ("ESI"), April 6, 2007, at paragraph II(A) (Dkt. 1125).

Defendants understand “potentially discoverable” information to mean discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including information that need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

In the context of discovery of ESI, the State interprets the Court’s Orders much more narrowly. The State believes that it is only obligated to discuss with Defendants ESI on which it intends to rely. It is the State’s view that the Court’s two Orders are to be read solely within the context of initial disclosure requirements of Fed. R. Civ. P. 26(a)(1). E-mail of counsel of April 16, 2007, Exhibit 1.

Specifically, Defendants requested identification of potentially discoverable ESI at the Oklahoma Department of Health, Oklahoma Department of Mines, the Oklahoma Corporation Commission, the Legislature and the Governor’s Office. The State responded that these additional agencies, divisions and offices of the State of Oklahoma have no ESI upon which the *State* intends to use to support its claims or defenses.

The parties are at an impasse on the discovery of ESI until this issue is resolved and Defendants believe that a discussion of the issue with the Court would likely remove this impasse.

2. The Court’s Order sets no timetable for the production of ESI.

The State has not begun to produce ESI to Defendants. The State commenced production of physical documents at State agencies in November, 2006. Document productions at four agencies must still be completed. None of the agencies have

produced ESI. Their Custodians of Records testified that they believe that ESI would be addressed at some date in the future.

The State has not provided a timetable to complete the production of hard documents. The State has not provided any schedule for the production of ESI. Defendants believe that a specific timetable for such production would aid in the orderly progress of the litigation, and would appreciate the opportunity to discuss that issue with the Court.

Respectfully submitted,

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